

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

MICHAEL BENJAMIN, ADC #139727

PLAINTIFF

v.

No. 5:12cv00237 JLH-JTR

RAY HOBBS, *et al*

DEFENDANTS

DEFENDANTS' FIRST MOTION FOR SUMMARY JUDGMENT

Come now Defendants Maurice Williams, James Shipman, Blake Brinker, and Andrew Ruh, ("ADC Defendants"), by and through their counsel, and for their First Motion for Summary Judgment, state as follows:

1. Plaintiff, Michael Benjamin, an inmate currently incarcerated in the Arkansas Department of Correction's ("ADC") Maximum Security Unit in Tucker, Arkansas, brings the present claim under 42 U.S.C. § 1983. By Order dated September 11, 2012, the Court has determined that Plaintiff has stated an excessive force claim against Defendants Williams, Shipman, Brinker and Ruh for forcible restraining Plaintiff on May 16, 2011 and March 1, 2012 in order for medical personnel to administer a Tuberculosis skin test to him. (Docs. 7 and 11.) Plaintiff seeks monetary relief, costs and attorney fees.

2. The material facts are not in dispute, and Defendants are entitled to judgment as a matter of law for two reasons.

3. First, Plaintiff's official-capacity claims are barred by sovereign immunity to the extent that Plaintiff seeks monetary damages.

4. And second, Plaintiff's claims are subject to dismissal as Plaintiff has failed to exhaust his administrative remedies in accordance with the Prison Litigation Reform Act prior to bringing suit.

5. Defendants have filed herewith a Brief in Support and Statement of Undisputed Facts that are fully incorporated herein as if restated word for word.

6. Additionally, Defendants attach Exhibits A and B in support of their Motion:

- a. Exhibit A – ADC Administrative Directive 10-32 (Inmate Grievance Procedure); and
- b. Exhibit B – Declaration of Barbara Williams (including Attachments 1 through 6).

WHEREFORE, Defendants pray that their Motion is granted, that Plaintiff's Complaint is dismissed, and for all other just and proper relief to which they are entitled.

Respectfully submitted,

Dustin McDaniel
Attorney General

By: /s/ Shawn J. Johnson
Shawn J. Johnson
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CERTIFICATE OF SERVICE

I, Shawn Johnson, Assistant Attorney General, do hereby certify that on November 19, 2012, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system.

I, Shawn Johnson, hereby certify that on November 19, 2012, I mailed the document by U.S. Postal Service to the following non CM/ECF participant:

Michael Benjamin ADC#139727
MAXIMUM SECURITY UNIT
Arkansas Department of Correction
2501 State Farm Road
Tucker, AR 72168-8713

PRO SE PLAINTIFF

/s/ Shawn J. Johnson
Shawn J. Johnson